COURT EXHIBIT NO. 8

JURY INSTRUCTIONS

March 11, 2024

United States v. Lamor Whitehead

22-cr-692

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I. GENERAL INTRODUCTORY INSTRUCTIONS

A. Introductory Remarks

Members of the jury, you have now heard all of the evidence in this case. We have reached the point where you are about to undertake your final function as jurors. You have paid careful attention to the evidence, and I am confident that you will act together with fairness and impartiality to reach a just verdict in this case.

My duty at this point is to instruct you on the law. It is your duty to accept these instructions of law and to apply them to the facts as you determine them, just as it has been my duty to preside over the trial and to decide what testimony and evidence were proper under the law for your consideration.

On these legal matters, you must take the law as I give it to you. If any attorney or witness has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow. You are to consider these instructions together as a whole; in other words, you are not to isolate or give undue weight to any particular instruction.

To the extent there are any differences between these instructions and the preliminary instructions I gave you at the beginning of trial, the instructions I am giving you now control, meaning that these instructions are the ones you must follow in your deliberations.

B. Role of the Jury[1]

As members of the jury, you are the sole and exclusive judges of the facts. You pass upon the evidence. You determine the credibility of the witnesses. You determine the reliability of the evidence. You resolve such conflicts as there may be in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you have determined them,

[1] Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

and you determine the weight of the evidence or lack of evidence. It is your sworn duty, and you have taken the oath as jurors, to determine the facts and to follow the law as I give it to you. You must not substitute your own notions or opinions of what the law is or ought to be.

C. Equality of the Parties[2]

I remind you that in reaching your verdict, you are to perform your duty of finding the facts without bias or prejudice as to any party. You must remember that all parties stand as equals before a jury in the courts of the United States. The fact that the prosecution is brought in the name of the United States does not entitle the Government or its witnesses to any greater consideration than that accorded to any other party. By the same token, the Government is entitled to no less consideration. The Government and Mr. Whitehead stand as equals at the bar of justice. Your verdict must be based solely on the evidence or the lack of evidence.

D. Presumption of Innocence[3]

Now, I will instruct you on the presumption of innocence and the Government's burden of proof in this case. Mr. Whitehead has pleaded not guilty. In so doing, he has denied every allegation against him. As a result of Mr. Whitehead's plea of not guilty, the burden is on the prosecution to prove Mr. Whitehead's guilt beyond a reasonable doubt. This burden never shifts to Mr. Whitehead for the simple reason that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

The law presumes Mr. Whitehead to be innocent of the charges against him. I therefore instruct you that Mr. Whitehead is to be presumed by you to be innocent throughout your

[2] Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).
[3] Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

deliberations. Mr. Whitehead began the trial here with a clean slate. This presumption of innocence alone requires you to acquit Mr. Whitehead unless you as jurors are unanimously convinced beyond a reasonable doubt of Mr. Whitehead's guilt, after a careful and impartial consideration of all the evidence in this case. If the prosecution fails to sustain its burden as to Mr. Whitehead, then you must find him not guilty. This presumption was with Mr. Whitehead when the trial began, remains with him even now as I speak to you, and will continue with him during your deliberations unless and until you are convinced that the prosecution has proven the elements of each offense beyond a reasonable doubt.

E. Proof Beyond a Reasonable Doubt[4]

Now, the next question is, what is reasonable doubt? It is a doubt that a reasonable person has after carefully weighing all of the evidence or a doubt that would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

In a criminal case, the burden is at all times upon the prosecution to prove guilt beyond a reasonable doubt. The law does not require that the prosecution prove guilt beyond all possible doubt; rather, proof beyond a reasonable doubt is sufficient to convict. The burden never shifts to Mr. Whitehead, which means that it is always the prosecution's burden to prove each of the elements of the crimes charged against Mr. Whitehead beyond a reasonable doubt.

If, after fair and impartial consideration of all the evidence, or the lack of evidence, you are satisfied of the guilt of Mr. Whitehead beyond a reasonable doubt, then you must convict Mr.

[4] Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

Whitehead. On the other hand, if after fair and impartial consideration of all the evidence, you have a reasonable doubt as to the any of the charges you are considering as to Mr. Whitehead, then you must acquit Mr. Whitehead on that charge.

F. The Nature of the Evidence[5]

In determining the facts, you must rely upon your own recollection of the evidence. Evidence consists of the testimony of witnesses and exhibits. The statements and arguments made by the lawyers are not evidence. Their arguments are intended to convince you what conclusions you should draw from the evidence or lack of evidence. You should weigh and evaluate the lawyers' arguments carefully, but you must not confuse them with the evidence. As to the evidence presented at trial, it is your recollection that governs, not the statements of the lawyers. You should also bear in mind that a question put to a witness is never evidence. It is the answer to the question that is evidence. However, if a witness affirms the facts in a question by answering "yes," you may consider the facts in that question to be evidence.

G. Direct and Circumstantial Evidence[6]

There are two types of evidence that you may properly use in deciding whether Mr. Whitehead is guilty or not guilty of the crimes with which he is charged. One type of evidence is called direct evidence. Direct evidence of a fact in issue is presented when a witness testifies to that fact based on what he or she personally saw, heard or observed. In other words, when a witness testifies about a fact in issue on the basis of that witness' own knowledge -- by virtue of what he or she sees, feels, touches, or hears -- that is direct evidence.

[5] Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).
[6] Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

The second type of evidence is circumstantial evidence. Circumstantial evidence is evidence that tends to prove a disputed fact indirectly by proof of other facts. There is a simple example of circumstantial evidence that I gave you on the first day of trial, and I will repeat it now.

Assume that when you came into the courthouse this morning the sun was shining and it was a nice day outdoors. Assume that the courtroom shades were drawn and you could not look outside. Assume further that as you were sitting here, someone walked in with an umbrella that was dripping wet and then, a few moments later, somebody else walked in with an umbrella that was also wet.

Now, because you could not look outside the courtroom and you could not see whether it was raining, you would have no direct evidence of that fact. But, on the combination of facts that I have asked you to assume, it would be reasonable and logical for you to conclude that it was raining.

That is all there is to circumstantial evidence. You infer on the basis of your reason, experience, and common sense from one established fact the existence or the nonexistence of some other fact. Drawing inferences is not the same as guesswork or speculation. An inference is a logical, factual conclusion that you might reasonably draw from other facts that have been proven.

It is sometimes difficult to prove material facts by direct evidence. Such facts may be established by circumstantial evidence and the reasonable inferences you draw.

You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both or to none; it is up to you to decide how much weight, if any, to give to any evidence.

H. Credibility of Witnesses[7]

I am going to give you a few general instructions about how you may determine whether witnesses are credible and reliable and whether the witnesses told the truth at this trial. It is really just a matter of using your common sense, your judgment and your experience.

First, consider how well the witness was able to observe or hear what he or she testified about. The witness may be honest, but mistaken. How did the witness's testimony impress you? Did the witness appear to be testifying honestly and candidly? Were the witness's answers direct or were they non-responsive? Consider the way the witness acted, his or her way of testifying and the strength and accuracy of his or her recollection. Consider whether any outside factors might have affected a witness's ability to perceive events.

Consider the substance of the testimony. How does the witness's testimony compare with other proof in the case? Is it corroborated or is it contradicted by other evidence? If there is a conflict, does any version appear reliable, and, if so, which version seems more reliable?

In addition, you may consider whether a witness had any possible bias or relationship with a party. Such a bias or relationship does not necessarily make the witness unworthy of belief, but these are factors that you may consider.

If a witness made statements in the past that are inconsistent with his or her testimony during the trial concerning facts that are at issue here, you may consider that fact in deciding how much of the testimony, if any, to believe. In making this determination, you may consider whether the witness purposely made a false statement, or whether it was an innocent mistake. You may also consider whether the inconsistency concerns an important fact or merely a small

[7] Adapted from the charge delivered in *United States v. Calk*, 19 Crim. 366 (S.D.N.Y. July 12, 2021) (LGS).

detail, as well as whether the witness had an explanation for the inconsistency, and, if so, whether that explanation appealed to your common sense.

If you find that a witness has testified falsely as to any material fact or if you find that a witness has been previously untruthful when testifying under oath or otherwise, you may reject that witness's testimony in its entirety or you may accept only those parts that you believe to be truthful or that are corroborated by other independent evidence in the case.

I. Testimony of Law Enforcement Officials and Clergy[8]

You have heard testimony from law enforcement officials and a member of the clergy. The fact that a witness may be or may have been employed by the United States Government, including as a law enforcement official, does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness. Similarly, the fact that a witness may be or may have been employed as a member of the clergy, does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

It is your decision, after reviewing all the evidence, whether to accept the testimony of any witness. You should give that testimony whatever weight, if any, you find it deserves.

J. Expert Witnesses[9]

You heard testimony from what we call an expert witness. An expert witness is a witness who, by education or experience, has acquired learning in a science or a specialized area of knowledge. Such witnesses are permitted to give their opinions as to relevant matters in which

[8] Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).
[9] Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

they profess to be experts and give the reasons for their opinions. Expert testimony is presented to you on the theory that someone who is experienced in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

Your role in judging credibility applies to experts as well as to other witnesses. You should consider the expert opinions received in evidence in this case and give them as much or as little weight as you think they deserve. If you decide that the opinion of an expert was not based on sufficient education, experience, or data, or if you conclude that the trustworthiness or credibility of an expert is questionable for any reason, or if the opinion of the expert was outweighed, in your judgment, by other evidence in the case, then you might disregard the opinion of the expert entirely or in part.

On the other hand, if you find the opinion of an expert is based on sufficient data, education, and experience, and the other evidence does not give you reason to doubt his or her conclusions, you would be justified in placing reliance on the expert's testimony, but the extent of such reliance is your choice.

K. Defendant's Testimony[10]

The defendant testified at this trial. You should examine and evaluate the defendant's testimony just as you would the testimony of any witness.

L. Uncalled Witnesses -- Available to Each Side[11]

There are people whom you heard about during the trial but who did not appear to testify. I instruct you that each party had an opportunity or lack of opportunity to obtain the testimony of

[10] Jt. Req. at 19. Page numbers in the Joint Charge refer to the PDF page number in the header of the document and not the page number at the bottom of each page.
[11] Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

any of these witnesses. Therefore, you should not draw any inferences or reach any conclusions about why neither party called a witness or what that witness would have testified had they been called. Their absence should not affect your judgment in any way. You should remember my instruction, however, that the law does not impose on the defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

M. Preparation of Witnesses[12]

You have heard evidence during the trial that witnesses have discussed the facts of the case and their testimony with the government lawyers, law enforcement agents, defense lawyers, or their own lawyers before the witnesses appeared in court.

Although you may consider that fact when you are evaluating a witness's credibility, there is nothing unusual or improper about a witness meeting with lawyers before testifying, so that the witness can be aware of the subjects he or she will be questioned about, focus on those subjects, and have the opportunity to review relevant exhibits before being questioned about them. Such consultation helps conserve your time and the Court's time. There is also nothing unusual or improper for a witness to have a lawyer before, during or after meeting with law enforcement.

Again, the weight you give to the fact or the nature of the witness's preparation for his or her testimony and what inferences you draw from such preparation are matters completely within your discretion.

[12] Adapted from the charge delivered in *United States v. Calk*, 19 Crim. 366 (S.D.N.Y. July 12, 2021) (LGS).

N. Sympathy: Oath as Juror[13]

Under your oath as jurors, you are not to be swayed by sympathy. You are to be guided solely by the evidence or lack of evidence in this case in determining whether or not the prosecution has proved Mr. Whitehead's guilt beyond a reasonable doubt.

It is for you and you alone to decide whether or not the prosecution has proved beyond a reasonable doubt that Mr. Whitehead is guilty of the crimes charged, solely on the basis of the evidence, and subject to the law as I have instructed you. It must be clear to you that if you let fear, prejudice, bias or sympathy interfere with your thinking, there is a risk that you will not arrive at a true and just verdict.

If you have a reasonable doubt as to Mr. Whitehead's guilt on any of the charges, then you must render a verdict of not guilty on that charge. On the other hand, if you find that the prosecution has met its burden of proving the guilt of Mr. Whitehead beyond a reasonable doubt on each charge, then you must not hesitate because of sympathy or any other reason to render a verdict of guilty on that charge.

II. SUBSTANTIVE INSTRUCTIONS

A. Summary of the Charges[14]

This is a criminal case. It is brought in the name of the United States against Lamor Whitehead, the defendant. The fact that the case is brought in the name of the United States does not entitle the Government to any greater consideration than that accorded to the defendant. All parties stand as equals here in court.

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[13] Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).
[14] Adapted from Jt. Req. at 25-27.

The defendant is charged with five crimes or counts, which I will review with you. Each is a separate offense or crime that the Government must prove beyond a reasonable doubt. You must, therefore, consider each charge separately and you will be asked to return a separate verdict on each charge.

The defendant has pleaded not guilty to these five charges. You must remember that the defendant is presumed innocent unless the Government has met its burden of proving that he is guilty beyond a reasonable doubt.

B. Counts One and Five: Wire Fraud (18 U.S.C. §§ 1343 and 2), Overview[15]

Counts One and Five charge the defendant with wire fraud. For Count One, the Government alleges that, from at least in or about April 2020 through in or about June 2021, the defendant made material and false representations to Pauline Anderson and her son, Rasheed Anderson to fraudulently obtain money from Ms. Anderson as a purported real estate investment, when the defendant in fact intended to use her money in whole or in part for his own personal purposes.[16]

For Count Five, the Government alleges that in or about June 2018, the defendant made material false representations about the finances of a business entity, Anointing Management Services LLC, in efforts to fraudulently obtain a $250,000 business loan, and electronically transmitted those misrepresentations, as part of a loan application, through interstate wires.

To prove these charges of wire fraud, the Government must establish beyond a reasonable doubt the following three elements:

[15] Adapted from Jt. Req. at 28.
[16] Defendant's request to change the language to "when the defendant did not intend to do so" is denied because the sentence describes what is alleged, and Government's proposed language is consistent with the Indictment while Defendant's is not. Jt. Req. at 25; Dkt. 2 at 4.

First, that there was a scheme or artifice to defraud others, or to obtain money or property, by means of false or fraudulent pretenses, representations, or promises;

Second, that the defendant participated in the scheme to defraud knowingly and with intent to defraud and

Third, that in execution of the scheme or artifice, the defendant used—or caused one or more other people to use -- interstate wires.

1. Counts One and Five: Element #1, A Scheme to Defraud[17]

I will now describe the three elements of wire fraud in greater detail. The first element is the existence of a scheme to defraud or obtain money or property by materially false and fraudulent pretenses, representations, or promises. A "scheme to defraud" is a plan to deprive another of money or property by trick, deceit, deception, or swindle.

A pretense, representation, statement, or promise is fraudulent if it was made falsely and with intent to deceive. A representation, statement, claim, or promise may also be fraudulent if it contains half-truths or if it conceals material facts in a manner that makes what is said or represented deliberately misleading or deceptive. The deception need not be premised on spoken or written words alone. The arrangement of words, or the circumstances in which they are used may convey the false and deceptive appearance. If there is deception, the manner in which it is accomplished does not matter.

The "fraudulent pretenses, fraudulent representations, or fraudulent promises" must be "material." A "material fact" is one that a reasonable person would have considered important in making his or her decision. The same principle applies to fraudulent half-truths or omissions, that is, failures to disclose facts.

[17] Adapted from Jt. Req. at 29-30.

Actual reliance by the person or entity that is the intended victim of the fraud is not required. It is also not necessary that the Government prove that the defendant profited from the scheme. Nor is it required that the intended victim was actually harmed or in fact suffered any loss as a consequence of any fraudulent representation or concealment of facts. It is enough that a material false statement, or a statement omitting material facts that made what was said deliberately misleading, was made as part of a fraudulent scheme in the expectation that it would be relied on. You must concentrate on whether there was such a scheme, not on the consequences of the scheme. Of course, proof concerning the accomplishment of the goals of the scheme may be the most persuasive evidence of the existence of the scheme itself.

A scheme to defraud need not be shown by direct evidence, but may be established by all of the circumstances and facts in the case.

2. Counts One and Five: Element #2, Intent to Defraud[18]

The second element of Counts One and Five that the Government must establish beyond a reasonable doubt is that the defendant devised or participated in the fraudulent scheme knowingly and with specific intent to defraud.

"Knowingly" means to act voluntarily and deliberately, rather than mistakenly or inadvertently.

To act with "intent to defraud" means to act willfully and with the specific intent to deceive for the purpose of causing some financial loss to another.

"Willfully" means to act knowingly and with a wrongful purpose.

Knowledge is a matter of inference from the proven facts. Direct proof of knowledge and fraudulent intent is rare and not required. Knowledge and criminal intent may be established by

[18] Adapted from Jt. Req. at 31.

circumstantial evidence, including a person's outward manifestations, his words, conduct, and acts, and all the surrounding circumstances, as well as the rational or logical inferences that may be drawn from that evidence. Circumstantial evidence, if believed, is no less valuable than direct evidence. You must be satisfied beyond a reasonable doubt that the defendant knew what he was doing and that he took the actions in question deliberately and voluntarily, rather than by mistake, accident, mere negligence or some other innocent reason.

Because an essential element of the crime charged is intent to defraud, it follows that good faith on the part of the defendant is a complete defense to a charge of wire fraud. The burden is on the Government to prove fraudulent intent and the consequent lack of good faith beyond a reasonable doubt.

3. Counts One and Five: Element #3, Interstate Wires[19]

The third element of wire fraud is that interstate wires (for example, phone calls, email communications, text messages, social media or website posts, and bank wires) were used in furtherance of the scheme to defraud.

"Interstate" just means that a wire communication passes between two or more states for example, a telephone call between New York and New Jersey. A wire communication also includes a wire transfer of funds between banks in different states.

The use of the wires need not itself be a fraudulent representation. Stated another way, the wire communication need not contain any fraudulent representation, or any request for money. It is sufficient if any interstate wire is used to further or assist in carrying out the scheme to defraud.

[19] Adapted from Jt. Req. at 33.

It is not necessary for the defendant to be directly or personally involved in the wire communication, as long as the communication was reasonably foreseeable in the execution of the alleged scheme to defraud in which the defendant is accused of participating. A defendant need not have specifically authorized others to make the call (or transfer the funds). If the defendant acts with knowledge that the use of the wires will follow in the ordinary course of business or where the use of the wires is reasonably foreseen, even though not actually intended, then he causes the wires to be used. This requirement is satisfied even if the wire communication was done by a person with no knowledge of the fraudulent scheme, including a victim of the alleged fraud.

Finally, only the wire communication must be reasonably foreseeable, not its interstate component. Thus, if you find that the wire communication was reasonably foreseeable, and the interstate wire communications actually took place, then this element is satisfied even if it was not foreseeable that the wire communication would cross state lines.

C. Count Two: Attempted Wire Fraud (18 U.S.C. § 1343, 1349, and 2), Overview[20]

Count Two charges the defendant with attempted wire fraud. For this charge, the Government alleges that in or about April and May 2022, the defendant made material false representations to Brandon Belmonte, about the defendant's supposed influence with New York City Mayor Eric Adams, in an attempt to fraudulently convince Mr. Belmonte to transfer money and other property to the defendant.

I have already instructed you as to the meaning of wire fraud in connection with Counts One and Five, and you should apply those instructions here.

[20] Adapted from Jt. Req. at 35.

In order to prove a defendant guilty of attempted wire fraud, the Government must prove the following two elements beyond a reasonable doubt.

First, that the defendant intended to commit a crime—here, the crime of wire fraud; and

Second, that the defendant willfully took some action that was a substantial step in an effort to bring about or accomplish the crime.

Mere intention to commit a specific crime does not amount to an attempt. In order to convict the defendant of an attempt, you must find beyond a reasonable doubt that the defendant intended to commit the crime charged, and that he took some action which was a substantial step toward the commission of that crime.

In determining whether the defendant's actions amounted to a substantial step toward the commission of the crime, it is necessary to distinguish between mere preparation on the one hand, and the actual doing of the criminal deed on the other. Mere preparation, which may consist of planning the offense, or of devising, obtaining, or arranging a means for its commission, is not an attempt, although some preparations may amount to an attempt. The acts of a person who intends to commit a crime will constitute an attempt when the acts themselves clearly indicate an intent to commit the crime, and the acts are a substantial step in a course of conduct planned to culminate in the commission of the crime.

There is no requirement that the attempt be successful or that the defendant actually have carried out the crime he was trying to commit.

D. Alleged Negligence Of A Victim Is Not A Defense[21]

For Counts One, Two and Five, it is not important whether a victim might have discovered the fraudulent schemes charged in these counts if the victim had probed further. If

[21] Adapted from Jt. Req. at 38.

you find that a scheme or artifice to defraud existed, it is irrelevant whether you believe that a victim was gullible, careless, or even negligent. Negligence, carelessness, or gullibility on the part of a victim is no defense to a charge of fraud.

E. Count Three: Attempted Extortion (18 U.S.C. 1951), Overview[22]

Count Three charges the defendant with attempted extortion. For this charge the Government alleges that from in or about February 2022 through in or about April 2022, the defendant used threats of force to attempt to obtain $5,000 from a business owned by Brandon Belmonte.

I have already instructed you on the elements of an attempt: first, that the defendant intended to commit a crime, here, extortion; and second, that the defendant willfully took some action that was a substantial step in an effort to bring about or accomplish the crime. These elements apply here to Count Three.

Let me tell you about extortion, which is the attempted crime for this charge. Extortion is the obtaining of or attempt to obtain another person's or entity's property or money, with his or its consent when this consent is induced or brought about through the use or threatened use of fear. The word "fear" here can include an apprehension, concern, or anxiety about possible economic loss or harm. "Fear" or "harm" can also involve a concern about violence or physical harm.

To meet its burden of proving that the defendant committed attempted extortion, the Government must establish beyond a reasonable doubt each of the following three elements:

First, the defendant wrongfully obtained or attempted to obtain the property of another;

[22] Adapted from Jt. Req. at 40.

Second, the defendant obtained or attempted to obtain this property with the victim's consent, but compelled this consent by the wrongful use or threat of force, violence, or fear, including fear of injury, or fear of economic loss or harm and

Third, as a result of the defendant's actions, interstate commerce, or an item moving in interstate commerce, was or would have been delayed, obstructed, or affected in any way or degree.

It is not necessary that force, violence and fear all were used or threatened. It is enough if any of them were used or threatened.

It is equally a crime to attempt to obtain or take money through fear as it is to actually obtain or take the money or property. Therefore, it is not necessary that any payment actually take place or be promised to take place. That is, even if no property was taken from the victim, and even if there was only an attempt to instill fear in the victim, and the victim experienced no actual subjective fear, the defendant has still committed a crime.

If you decide that force or violence was used or threatened to obtain or attempt to obtain the property, then that is wrong, even if the person who took or tried to take the property believed that it was rightfully his.[23]

As to the interstate commerce requirement, it is not necessary for the Government to prove that commerce actually was affected by the defendant's conduct or that the defendant intended or anticipated that his actions would affect interstate commerce. It is sufficient for you to find that the defendant's conduct possibly could have affected interstate commerce. The

[23] Adapted from Jt. Req. at 43.

Government needs to prove only a very slight or subtle actual or potential effect on interstate commerce.[24]

F. Count Four: False Statements (18 U.S.C. § 1001), Overview[25]

Count Four charges defendant with knowingly and willfully making materially false, fictitious, and fraudulent statements to the FBI.[26] For this charge, the Government alleges that on or about June 8, 2022, during the execution of a search warrant, Mr. Whitehead falsely told special agents of the FBI that he owned only the cellphone that was then on his person, when Mr. Whitehead knew that he in fact owned and used at least one other cellphone.[27]

The relevant portion of the statute covering this charge prohibits, in relevant part, "knowingly and willfully . . . mak[ing] any materially false, fictitious, or fraudulent statement or representation" "in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States."[28]

In order to prove the defendant guilty of this charge, the Government must establish beyond a reasonable doubt the following five elements:

First, that on or about a particular date, the defendant made a statement or representation;

Second, that the statement or representation was material, meaning capable of influencing the Government's decisions or activities;

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[24] Adapted from Jt. Req. at 45.
[25] Adapted from Jt. Req. at 46-47.
[26] The parties competing requests to characterize the Defendant's statement are denied, as the characterization is a matter of evidence and argument and not for the Court.
[27] Defendant's request to change the language to "he did not have a second cell phone that belonged to him that FBI agents could call him on, when Mr. Whitehead knew that he in fact owned and used at least one other cell phone that FBI agents could contact him on" is denied because the sentence purports to describe what is alleged; the Government's language is consistent with the Indictment while the Defendant's is not. Jt. Req. at 26-27, 46; Dkt. 2 at 6.
[28] 18 U.S.C. § 1001(a)(1)-(2).

Third, that the statement or representation was false, fictitious, or fraudulent;

Fourth, that the defendant made the false, fictitious, or fraudulent statement or representation knowingly and willfully; and

Fifth, that the statement or representation pertained to a matter within the jurisdiction of the executive, legislative, or judicial branch of the United States Government.

G. Motive[29]

Proof of motive is not a necessary element of any of the crimes with which the defendant is charged. Proof of motive does not establish guilt, nor does the lack of proof of motive establish that the defendant is not guilty. If the guilt of the defendant is shown beyond a reasonable doubt, it is immaterial what the defendant's motive for the crime or crimes may be, or whether the defendant's motive was shown at all. The presence or absence of motive is, however, a circumstance which you may consider as bearing on the intent of the defendant.

H. Venue[30]

In addition to the elements of each of the five charges that I have just described for you, for each charge, you must consider the issue of venue, namely, whether any act in furtherance of the unlawful activity occurred within the Southern District of New York, which includes the Bronx and Manhattan. Venue must be examined separately for each count. The Government must prove venue by a preponderance of the evidence, which means more likely than not. This is unlike all the elements I have just described, which must be proved beyond a reasonable doubt.

With respect to Counts One, Two, and Five, which charge wire fraud and attempted wire fraud, it is sufficient to establish venue if the Government has proven that any of the wire

[29] Jt. Req. at 53.
[30] Adapted from Jt. Req. at 54-55.

communications you found to satisfy the third element of the offense—use of interstate wires—were transmitted to, from, or through the Southern District of New York.

With respect to Count Three, which charges attempted extortion, it is sufficient to establish venue if you find that the Government has proven that any act in furtherance of the offense was committed in the Southern District of New York.

With respect to Count Four, which charges false statements, venue is appropriate in the jurisdiction to which those statements were conveyed, where the statements had an effect, or where the statement was acted or relied upon by the federal government. It is sufficient to establish venue if you find that a false statement was made in one jurisdiction and that false statement was conveyed to, had an effect in, or was relied upon by a federal agency located in the Southern District of New York

III. FINAL GENERAL INSTRUCTIONS

A. Similar Acts[31]

There has been evidence during the trial that the defendant previously engaged in conduct that is similar in nature to the conduct he is charged with in this case. Let me remind you that the defendant is on trial only for committing the acts with which he is charged. Accordingly, you may not consider this evidence of the similar acts as a substitute for proof that the defendant committed the crimes charged. You also may not consider this evidence as proof that the defendant has a criminal personality or bad character. This evidence was admitted for a more limited purpose, namely, as potential evidence of the defendant's identity, motive, opportunity, intent, knowledge, plan, and/or absence of mistake, and to provide background for the alleged offenses. You may consider it for those purposes only. During trial, I gave you a similar

[31] Adapted from Dkt. 164 and Jt. Req. at 58.

instruction. As a reminder, the instructions I am giving you now control, meaning that these instructions are the ones you must follow in your deliberations.

If you determine that the defendant committed the acts charged and the similar acts as well, then you may, but you need not, draw an inference that in doing the acts charged, the defendant acted knowingly and intentionally and not because of some mistake, accident, or other reasons.

B. Particular Investigative Techniques[32]

You have heard reference to the fact that certain investigative techniques were or were not used by the Government. There is no legal requirement that the Government prove its case through any particular means. While you are to consider carefully the evidence presented, you are not to speculate as to why law enforcement used the techniques they did, or why they did not use other techniques. The Government is not on trial and law enforcement techniques are not your concern. Your sole concern is to determine whether or not, based on the evidence or lack of evidence, the guilt of the defendant has been proved beyond a reasonable doubt.

C. Stipulations[33]

You have heard evidence in the form of what are called "stipulations." A stipulation of fact is an agreement among the parties that a certain fact is true. You should regard such agreed facts as true. However, it is for you to determine the effect or weight to give those facts.

[32] Adapted from Jt. Req. at 59.
[33] Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

D. Excerpts and Redactions[34]

Some of the exhibits admitted into evidence consist of excerpts of longer documents that were not admitted into evidence in their entirety. These excerpts are simply the portions of the underlying documents considered to be most relevant to the case by the party introducing them. There is nothing unusual or improper about the use of such excerpts, and you are not to speculate from the use of such excerpts that any relevant portion of a document has been omitted.

Similarly, some of the exhibits admitted into evidence include redactions of certain information. Again, there is nothing unusual or improper about such redactions, and you are not to speculate about what has been removed.

E. Summaries and Transcripts[35]

You have seen summaries of exhibits. Most of these were admitted into evidence. One -- the table of audio recordings – was shown to you as a demonstrative aid to help you understand the underlying evidence. None of these summaries are direct evidence. They summarize more voluminous information that was reflected in documents or recordings admitted into evidence. It is often more convenient or helpful to use summaries rather than placing all of the underlying documents and recordings in front of you. But it is up to you to decide whether the summary exhibits fairly and correctly reflect the evidence they purport to summarize. To the extent that the summary exhibits conform to your understanding of the underlying evidence, you may accept them. To the extent they do not, you should set them aside and rely on the underlying evidence instead. They are intended to serve as aids in a party's presentation of the evidence.

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[34] Adapted from the charge delivered in *United States v. Calk*, 19 Crim. 366 (S.D.N.Y. July 12, 2021) (LGS).

[35] Adapted from the charge delivered in *United States v. Calk*, 19 Crim. 366 (S.D.N.Y. July 12, 2021) (LGS) and Jt. Req. at 67.

You have also seen transcripts of recordings to assist you in listening to the recordings. The transcripts are not evidence themselves. It is the underlying recordings that are evidence. To the extent the transcripts conform to what you heard on the recordings, you may accept them. To the extent that the transcripts differ from what you heard, you may reject them. These recordings were made in a lawful manner and no one's rights were violated.

F. Brandon Belmonte's Statements[36]

Recordings of conversations between Brandon Belmonte and the defendant, and text messages exchanged between Belmonte and the defendant were admitted as evidence. The statements made by Belmonte on the recordings and in the text messages are not to be considered for their truth. Instead, they are being admitted to provide context for statements made by the defendant; for their effect on the defendant as the listener to or recipient of Belmonte's statements; or as statements the defendant adopted based on his responses or lack of objection or response. You should consider Belmonte's statements only for those purposes, and should not consider Belmonte's statements for the truth of the matters asserted therein.

G. Use of Evidence Obtained Pursuant to Searches[37]

You have heard testimony about evidence seized in various searches, including the search of certain electronic devices, such as electronic communications.

Evidence obtained from those searches was properly admitted in this case, and may be properly considered by you. Whether you approve or disapprove of how the evidence was

[36] Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS) and from the charge proposed by the parties at Dkt. No. 159.
[37] Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

obtained should not enter into your deliberations, because I instruct you that the Government's use of the evidence is lawful.

While you are to consider carefully the evidence presented, you are not to consider whether law enforcement acted properly or improperly. The FBI is not on trial. Your sole concern is to determine whether, based on the evidence or lack of evidence, the guilt of the defendant has been proved beyond a reasonable doubt.[38]

H. Rulings on Evidence and Objections[39]

You should draw no inference or conclusion for or against any party on the basis of the lawyers' objections or my rulings on objections. Counsel have a right and a duty to make legal objections.

Nothing I say is evidence. If I commented on the evidence at any time, do not accept my statements in place of your recollection or your interpretation. It is your recollection and interpretation that govern. Also, do not draw any inference from any of my rulings, which do not indicate any view on my part. You should not speculate about what I may think.

At times I may have asked a witness to keep his or her voice up or directed a witness to be responsive to questions. At times I may have asked a question myself. Any questions that I asked, or instructions that I gave, were intended only to clarify the presentation of evidence. You should draw no inference or conclusion of any kind, favorable or unfavorable, with respect to any comment, question, or instruction of mine. Nor should you infer that I have any views as to the credibility of any witness, the weight of the evidence, or how you should decide any issue that is before you. That is your role.

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[38] Adapted from the Government's filing at Dkt. No. 176 at 8.
[39] Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

Finally, the personalities and the conduct of counsel are not in any way at issue. If you formed opinions of any kind about any of the lawyers in the case, favorable or unfavorable, those opinions should not enter into your deliberations.

I. Duty Not to Consider Possible Punishment[40]

The question of possible punishment of the defendant is of no concern to you, the members of the jury, and should not, in any sense, enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the Court.

Your function is to weigh the evidence in the case and to determine whether or not the Government has proved that Mr. Whitehead is guilty beyond a reasonable doubt, solely upon the basis of such evidence.

J. Closing Arguments[41]

With these instructions in mind, you will next hear from the lawyers, who will give their closing arguments. I remind you that arguments by lawyers are not evidence, because the lawyers are not witnesses. If what they say differs from your recollection of the evidence, your recollection controls. What they say to you in their closing arguments is intended to help you understand the evidence and reach your verdict. Please pay careful attention to their arguments.

[40] Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).
[41] Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).